In the High Court of Uttaranchal at Nainital.

Civil Misc. W.P. No. 50 of 2000
(Old No. 11462 of 1981)

Radhya Shiam and six others …….Petitioners.

Vs.
District Judge Dehradun
and six others …..Respondents.

Dated: 12-10-2004

Hon'ble Rajesh Tandon, J.

Heard Sri I.P. Kohli, Senior Advocate, learned counsel for the petitioners and Sri Nand Prasad, learned Standing Counsel.

By the present writ petition the petitioners have prayed for a writ of certiorari quashing the order dated 4th August 1981.

Briefly stated the facts of the case are that a suit was filed by the respondent nos. 4 to 6. The suit was filed on the ground that the property situate in Mauja Asanbagh (Herburtpur), District Dehradun and that U.P. Act No.13 of 1972 is not applicable. In the written statement it has been pleaded by the petitioners that the area in question is situate within three kilometers boundary of village Vikas Nagar and within the municipal limit and Act No.13 of 1972 is applicable to the premises in question. During the pendency of the case the petitioners have filed an application for amendment. The amendment was sought to the following effect:-

> "प्रतिवादी पत्र के चरण–6 के अन्त में निम्नलिखित भाषा बढायी जावे–
> आसन बाग (हरवर्टपुर) नाम से कोई मौजा नहीं है। वाद ग्रस्त सम्पति मौजा वेस्ट होप टाउन में स्थित है। राजस्व अभिलेखों में यही मौजा अर्थात लोकल एरिया दर्ज है यह हरबर्टपुर नाम से भी प्रख्यात है यह मौजा विकासनगर पालिका सीमा के तीन किलोमीटर के भीतर स्थित है और वादग्रस्त सम्पति यू0पी0 अधिनियम 13 वर्ष 83 से प्रभावित है।"

The amendment application was rejected on 3-6-1981 on the ground that the same is malafide. A revision was also preferred against the rejection order, which was also rejected.

A perusal of the amendment shows that the petitioners have sought only the amendment to the effect that 'Mauja Asanbagh (Herburtpur) does not exist and the disputed property situate in Mauja Waste Hope Town'. The amendment in question is formal in nature and will not change the nature of the proceedings. It is really surprising that the suit was filed as back as in the year 1981. The Apex Court from time to time has considered that the amendment should be allowed unless it is malafide in nature so as to convert the suit in to a different cause of action.

Apex Court in *B.K. Narayan Pillai vs. Parameswaran Pillai and another (2000) 1 S.C. Cases 712* has emphasized that technicalities of law should not be permitted to hamper the court in administration of justice between the parties.

Similar view has been taken in the matter of *Akshaya Restaurant v. p. Anjanappa and Another; 1995 Supp(2) Suspreme Court Cases 303.* The observations of the Apex Court are as under:-

> *"We find no force in the contention. It is settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. It is seen that in para 6 of the written statement a definite stand was taken but subsequently in the application for amendment it was sought to be modified as indicated in the petition. In that view of the matter, we find that there is no material irregularity committed by the High Court in exercising its poer under Section 115 CPC in permitting amendment of the written statement."*

Amendments are allowed in the pleadings to avoid uncalled multiplicities of litigation. In the case *Raghu Thilak D. John vs. S. Rayappan and others (2001) 2 S.C. Cases 472* the Apex Court has held as under:-

> *"If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimize the litigation. The plea that the relief sought by way of*

amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averment made in paras 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in circumstances of the case the plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for."

In view of the proposition of law the learned trial court is direction to examine the amendment sought by the petitioners and after hearing both the parties pass appropriate order.

Subject to the aforesaid observation, the writ petition is disposed of. No order as to costs.

12-10-2004 **(Rajesh Tandon, J.)**

ISB